

JAN 27 2005

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
Jesse L. Jackson, Sr.)
Rainbow/PUSH Coalition, Inc.) MUR 5183
Citizenship Education Fund, Inc.)
Democratic National Committee,)
and Andrew Tobias, as treasurer)
Democratic Senatorial Campaign Committee,)
and David Rudd, in his official)
capacity as treasurer)
Democratic Congressional Campaign Committee)
and James J. Bonham, in his official)
capacity as treasurer)

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Accept the attached Conciliation Agreement with Jesse L. Jackson, Sr., Rainbow/PUSH Coalition, Inc., Citizenship Education Fund, Inc. ("Jackson Respondents"); accept the attached Conciliation Agreement with the Democratic National Committee and Andrew Tobias, as treasurer ("DNC"); find reason to believe that the Democratic Senatorial Campaign Committee and David Rudd, in his official capacity as treasurer, ("DSCC") and the Democratic Congressional Campaign Committee and James J. Bonham, in his official capacity as treasurer, ("DCCC") violated the Act and enter into conciliation with them;

II. BACKGROUND

This matter involves the Jackson Respondents' expenditure of corporate funds for a partisan get-out-the-vote and voter registration ("GOTV/VR") speaking tour by Reverend Jesse L. Jackson, Sr. during the fall of 2000, which was coordinated with, and subsequently reimbursed by, Democratic Party political committees. See First General Counsel's Report, dated February 27, 2004 ("First GCR"). In this Report, the Office of General Counsel

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1 recommends that the Commission accept two conciliation agreements, each including a civil
2 penalty of \$100,000, and that the Commission find reason to believe that the DSCC and DCCC,
3 whose involvement in the conduct at issue became apparent only in the course of the
4 investigation, violated the Act.

5 In March 2004, following a complaint making allegations as to the Jackson Respondents,
6 the DNC, as well as Gore-Lieberman 2000 (but not against the DSCC or DCCC), the
7 Commission found reason to believe that the Jackson Respondents and the DNC violated the Act
8 stemming from corporate advances made by Rainbow/PUSH Coalition, Inc. ("Rainbow") and
9 the Citizenship Education Fund ("CEF") for a partisan GOTV/VR campaign that were later
10 reimbursed by a \$250,000 payment from the DNC in December 2000. The Commission also
11 authorized pre-probable cause conciliation with the Jackson Respondents and the DNC.

12 At the time the Commission made its reason-to-believe findings, this Office was aware of
13 a press report suggesting that the Jackson Respondents had been reimbursed for up to \$450,000
14 in travel expenses by the DNC and/or other unnamed Democratic Party Committees, but had no
15 specific information regarding these additional payments. *See* First GCR at 7. The
16 investigation, which included interviews with current and former Rainbow officials as well as
17 with current and former DNC officials, revealed that the DNC arranged for the DSCC and the
18 DCCC each to pay \$100,000 to the Jackson Respondents to defray the costs of the tour.¹
19 Because the DSCC payments of \$60,000 and \$40,000 were made in October 2000 before all of
20 the expenses were incurred, they may not constitute advances. The DSCC payment of \$100,000
21 was made on November 8, 2000, immediately after the expenses were incurred. However,

¹ During the course of the investigation, this Office had subpoenaed records from the DSCC and DCCC to confirm that they paid the Jackson Respondents, and the DSCC and DCCC filed motions to quash the subpoenas. This Report recommends that the Commission deny the motions to quash. *See infra* § IV C.

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1 unlike the DNC's payment, which was made from a mixed pool of allocated federal and non-
2 federal funds, the DSCC and DCCC's payments were made entirely with non-federal funds.²

3 **III. THE DNC AND JACKSON CONCILIATION AGREEMENTS**

4 This Office recommends that the Commission accept pre-probable cause conciliation
5 agreements with the DNC and the Jackson Respondents.

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² Since it arranged for the speaking tour and its financing, the DNC has accepted responsibility for all advances from the incorporated entities associated with the Jackson Respondents. However, the manner in which the DSCC and DCCC paid the Jackson Respondents, (i.e. from non-federal accounts), is a separate issue that is relevant exclusively to the DSCC and DCCC

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Additionally, the Keep Hope Alive PAC, which is connected to Reverend Jackson, was directly invoiced for, and paid, approximately \$200,000 in travel costs. These payments appear to be permissible. Keep Hope Alive PAC was referenced in the First General Counsel's Report because its non-federal account had received \$110,000 from the DNC during the general election time period that possibly could have been related to the tour. Witness testimony and documents suggest that the DNC payments to Keep Hope Alive PAC were made to reimburse the costs of Reverend Jackson's travel to the Democratic National Convention and other purposes unconnected to the speaking tour. Thus, no action is recommended with respect to these transactions.

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16 **IV. DSCC AND DCCC**

17 **A. Failure to Allocate Expenditures**

18 During the course of the investigation of the DNC-Jackson transactions,

19 Rainbow/PUSH's former Chief Financial Officer, Billy Owens, testified that the \$250,000

20 payment from the DNC was part of a larger \$450,000 commitment made by the DNC on behalf

21 of the Democratic Party. The DNC told Owens that the remainder of the commitment would be

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1 fulfilled by payments of \$100,000 each from the DSCC and DCCC.⁵ Owens stated that
2 following discussions with the DNC representatives in which he was told about the role of the
3 other committees, he had minimal contacts with both the DSCC and DCCC to finalize the
4 arrangements for payment, prior to the payments actually being made from the DSCC and
5 DCCC nonfederal accounts in October and November 2000.⁶ Supplementing Owens'
6 recollection are responses to interrogatories filed by the Jackson Respondents, which reflect
7 Reverend Jackson's recollection that the "Democratic Party" had reached an agreement to fund
8 the speaking tour and that part of the total payments came from the DSCC and DCCC.⁷ The
9 DNC does not dispute the facts set forth by Owens and the Rainbow/PUSH Interrogatory
10 Answers and admits that it arranged for the DSCC and DCCC payments.⁸ As discussed below,
11 the DSCC and DCCC have resisted this Office's attempts to inquire about those transactions.⁹

⁵ Numerous Senate and Congressional candidates appeared together with Reverend Jackson at various events, and given their role in funding the travel, the DSCC and DCCC may have assisted in arranging the candidates' participation. The speaking tour coordinator, Nadine Chatman, recalls updating numerous Washington, D.C.-based Democratic Party officials concerning the tour's itinerary and logistics, but could not recall for certain whether any of her contacts worked for the DSCC or DCCC.

⁶ Owens could not recall the name of his contact at the DSCC that he met with on one occasion and never had a contact at the DCCC, where he left messages with finance staff seeking the payment. If the DSCC and DCCC resist conciliation, we would attempt to refresh Mr. Owens' recollection by providing him with the names of persons who worked at the DSCC and DCCC during the Fall of 2000.

⁷ Despite evidence suggesting the DSCC was informed of the Jackson speaking tour, cover letters memorializing the wire transfers to CEF signed by the DSCC's Executive Director Jamie Fox state that the "donation is made for charitable purposes and may not be used in connection with any partisan political activities." Attachment 3

⁸ DNC Chief Financial Officer Brad Marshall, identified by Owens as his primary DNC contact, claimed to have no recollection of making these arrangements. In response to a deposition subpoena issued in a matter akin to Federal Rule of Civil Procedure 30(b)(6), the DNC reported that it was unable to identify any of its current personnel who participated in discussions with the DSCC or DCCC regarding these payments.

⁹ Although the DSCC and DCCC disclosure reports show disbursements to Rainbow and CEF from nonfederal accounts, there was no evidence of any disbursements from allocated or federal accounts. Accordingly, this Office sought further information directly from the DSCC and DCCC. This Office was also compelled to contact the DSCC and DCCC as witnesses because counsel to the Jackson Respondents questioned whether the payments were actually made because his clients' internal accounting records did not reflect the payments. DSCC wire transfer receipts confirmed that \$40,000 was wired from the DSCC's account at Bank of America to CEF's

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1 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits
2 corporations and labor organizations from making contributions in connection with Federal
3 elections, and prohibits political committees from knowingly accepting such contributions.
4 2 U.S.C. § 441b(a). The Act further prohibits political committees established by a national
5 party committee from accepting in excess of \$20,000 per calendar year from any person.
6 2 U.S.C. §§ 441a(a)(1)(B) and 441a(f). Each organization which finances political activity in
7 connection with both federal and non-federal elections must follow depository and allocation
8 regulations at 11 C.F.R. §§ 102.5 and 106.5. These rules implement the contribution and
9 expenditure limitations established by 2 U.S.C. §§ 441a and 441b.

10 National party committees, such as the DSCC and DCCC, that have established separate
11 federal and non-federal accounts must make all disbursements, contributions, expenditures and
12 transfers by the committee in connection with any federal election from their federal accounts.
13 Only funds subject to the Act's prohibitions and limitations shall be deposited into the federal
14 accounts.¹⁰ 11 C.F.R. § 102.5(a)(1)(i). *See also* 11 C.F.R. § 106.5(a). National party
15 committees, such as the DSCC and DCCC, that make disbursements in connection with federal
16 and non-federal elections must allocate the costs of certain allocable activities between their
17 federal and non-federal accounts. 11 C.F.R. § 106.5(a). Allocable activities include
18 administrative expenses and the costs of generic voter drives.¹¹ 11 C.F.R. § 106.5(c). A party

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account at South Shore Bank of Chicago on October 11, 2000 and that an additional \$60,000 was wired between these accounts on October 26, 2000. A DCCC bank statement from Bank of America confirmed that \$100,000 was wired to Rainbow's account at Seaway National Bank on November 8, 2000.

¹⁰ The DSCC's and DCCC's non-federal accounts can accept corporate contributions prohibited by 2 U.S.C. § 441b and contributions in excess of the limits prescribed by 2 U.S.C. § 441a(a).

¹¹ "Generic voter drives" include "voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. § 106.5(a)(2)(iv). Allocable costs, including voter registration and get-out-the vote activities, must be allocated according to the funds expended

1 committee that gives non-federal funds to a third party with the knowledge that all or a part of
2 the funds will be used to conduct activities which, if engaged in by the party committee directly
3 would have been allocable, must allocate the donation to the third party in the same manner as it
4 would have had the party committee made the expenditure directly. *See FEC v. California*
5 *Democratic Party*, 1999 WL 33633264 (E.D. Cal., Oct. 14, 1999.) (NO. CIV. S-97-
6 0891GEBPAN); *FEC v. California Democratic Party*, 13 F. Supp. 2d 1031 (ED Calif. 1989).
7 *See also* MUR 3774 (National Republican Senatorial Committee.)

8 The conciliation agreements submitted by the Jackson Respondents and the DNC
9 establish that the DSCC and DCCC made expenditures for a coordinated, partisan get-out-the-
10 vote and voter registration drive out of their non-federal accounts. These payments were made
11 while the DSCC and DCCC were participating in DNC Coordinated Campaign events with
12 Reverend Jackson. Accordingly, this Office recommends that the Commission find reason to
13 believe that the Democratic Senatorial Campaign Committee and David Rudd, in his official
14 capacity as treasurer, and the Democratic Congressional Campaign Committee and James J.
15 Bonham, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b by using
16 excessive and prohibited funds to finance federal election activity, 11 C.F.R. § 102.5(a)(1)(i) and
17 106.5(g)(1)(i) by failing to make payments from federal accounts, and 11 C.F.R. § 106.5(c) by
18 failing to allocate payments for joint federal and non-federal activities between federal and non-
19 federal accounts.

B. Conciliation

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V. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Democratic National Committee, and Andrew Tobias, as treasurer.
2. Accept the attached conciliation agreement with Jesse L. Jackson, Sr., the Rainbow/PUSH Coalition, Inc. and Citizenship Education Fund, Inc.

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3. Find reason to believe that the Democratic Senatorial Campaign Committee, and David Rudd, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(c) & (g)(1)(i).
4. Find reason to believe that the Democratic Congressional Campaign Committee, and James J. Bonham, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(c) & (g)(1)(i).
- 5.
6. Enter into conciliation with the Democratic Senatorial Campaign Committee, and David Rudd, in his official capacity as treasurer, and the Democratic Congressional Campaign Committee, and James J. Bonham, in his official capacity as treasurer.
7. Approve the attached Conciliation Agreement for the Democratic Senatorial Campaign Committee, and David Rudd, in his official capacity as treasurer, and the Democratic Congressional Campaign Committee, and James J. Bonham, in his official capacity as treasurer.
8. Approve the attached Factual and Legal Analyses.
9. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Date

1/26/05

By:

Rhonda J. Vosdingh
Associate General Counsel

Mark D. Shonkwiler
Assistant General Counsel

Peter G. Blumberg
Attorney

Attachments:

1. Conciliation Agreement with Democratic National Committee
2. Conciliation Agreement with Jesse L. Jackson, Sr., et al.
3. Letters from DSCC to Citizenship Education Fund, dated October 11, 2000 and October 26, 2000
4. Conciliation Agreement for Democratic Senatorial Campaign Committee
5. Conciliation Agreement for Democratic Congressional Campaign Committee
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9. Factual and Legal Analysis for Democratic Senatorial Campaign Committee
10. Factual and Legal Analysis for Democratic Congressional Campaign Committee

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